Office - Supreme Court, U.S.
FILED
AUG 2 5 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 7

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER AND B. A. WATSON, *Petitioners*

vs.

PAT J. GIBSON, GENERAL CHAIRMAN OF LOCALS 6051 AND 28, RAYMOND DICKERSON, DIVISION CHAIRMAN OF LOCALS 6051 AND 28, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, A. F. OF L., ET AL., *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S BRIEF

JOSEPH C. WADDY
ROBERSON L. KING
Counsel for Petitioners

ROBERT L. CARTER
WILLIAM C. GARDNER
WILLIAM B. BRYANT
Of Counsel

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2
QUESTIONS PRESENTED	3
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. The Complaint Charges the Brotherhood With Breach of the Duty of Fair Representation Imposed Upon It by the Railway Labor Act and With Abuse of Statutory Position and Power and, Therefore, Is Within the Jurisdiction of the Court	7
II. There Are No Factors Present in This Case Either Ousting or Limiting the Jurisdiction of the Court	13
CONCLUSION	17

TABLE OF CASES

Brotherhood of Locomotive Firemen and Enginemen v. Mitchell, 190 F. 2d 308 (1951) 9

Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 96 L.Ed. 1293 (1953) 8, 9, 13, 16

Central of Georgia Railway Co. v. Jones, 229 F. 2d 648 (1956) 9

Dillard v. Chesapeake & Ohio R. Co., 199 F. 2d 948 (1952) 9, 13

Georgia v. Pennsylvania R. Co., 324 U.S., 89 L.Ed 105 (1945) 16

Graham v. Brotherhood of Locomotive Firemen and Enginemen, 330 U.S. 232, 94 L.Ed 23 (1949) 8, 13

Page

Great Northern R. Co. v. Merchants Elevator Co., 259 U.S. 285, 66 L.Ed 943 (1922) 16

Hayes v. Union Pacific Railroad Co., 184 F. 2d 337, cert. den. 340 U.S. 942 (1951) 13

Hettenbaugh v. Air Line Pilots Association, 189 F. 2d 319 (1951) 6, 13

J. I. Case Co. v. National Labor Relations Bd., 321 U.S. 332 88 L.Ed. 762 (1944) 11

Richardson, et al., v. Texas & New Orleans R. Co., et al., 242 F. 2d 230 (1957) 9

Rolax, et al., v. Atlantic Coast Line Railroad Co., et al., 186 F. 2d 473 (1951) 9

Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239, 94 L.Ed. 795 (1950) 6, 14

Steele v. Louisville & Nashville R. Co., et al., 323 U.S. 192, 89 L.Ed. 173 (1944) 7, 8, 11, 12, 13, 15, 16

Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, 89 L.Ed. 187 (1944) 8, 11, 13

Constitution

Fifth Amendment 6

Statutes

Railway Labor Act, 48 Stat. 1185, 45 U.S.C., Sec. 151 et seq. 2, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 7

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER AND B. A. WATSON, *Petitioners*

vs.

PAT J. GIBSON, GENERAL CHAIRMAN OF LOCALS 6051 AND 28, RAYMOND DICKERSON, DIVISION CHAIRMAN OF LOCALS 6051 AND 28, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, A. F. OF L., ET AL, *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S BRIEF

Opinions Below

The opinion of the United States District Court for the Southern District of Texas was filed March 16, 1955, and appears on page 19 of the Transcript of Record.

The per curiam opinion of the United States Court of Appeals for the Fifth Circuit is officially reported in 229 F. 2d 436, and is printed in the Transcript of Record at page 29a.

A petition for rehearing was denied without opinion by the United States Court of Appeals for the Fifth Circuit on March 15, 1956 (R. 30).

Jurisdiction

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered January 31, 1956. Rehearing was denied March 15, 1956.

The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code.

Statutes Involved

The Statute involved is the Railway Labor Act as amended, 45 United States Code, Section 151, et seq., and particularly the following:

Section 152:

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. . . ."

"Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted —

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization

representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member. . . ."

Section 15

"First (i). The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the Chief Operating Officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Questions Presented

Whether a complaint by Negro members of a craft of railway employees against a labor union—their collective bargaining representative under the Railway Labor Act—alleging that, solely because of their race, the union bars them from membership in its local lodge which carries on the collective bargaining process; uses its statutory position to compel them to maintain membership in an inferior, racially segregated local; refuses to exert any effort toward maintenance of the collective agreement insofar as it pertains to the Negro members of the craft, resulting in their loss of employment and employment rights; and refuses either to hear their charges of discrimination or to take any steps to investigate and redress their wrongs, states a claim against the bargaining representative within the jurisdiction of the Federal courts for breach of the statutory duty of fair representation imposed upon such repre-

sentative by the Railway Labor Act, notwithstanding the fact that the complaint makes no claim other that the collective agreement was unlawfully entered into or is unlawful in its terms or effect?

(a) If jurisdiction exists, is there present in this case any factor either ousting or limiting that jurisdiction?

Statement of the Case

Petitioners, employees of the Texas and New Orleans Railroad Company in its Freight House at Houston, Texas, are Negroes and are members of the craft or class of clerks, freight handlers, express and station employees of that company. (R. 7). The craft is composed of both white and colored employees and is represented for collective bargaining purposes under the Railway Labor Act by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter called the Brotherhood). (R. 7, 8). There is an agreement, enacted pursuant to Section 2—Eleventh of the Railway Labor Act, 45 U.S.C.A. 152—Eleventh, (commonly known as a "union shop agreement"), in effect between the Brotherhood and the carrier, requiring all members of the craft or class, as a condition of continued employment, to become members of the Brotherhood. (R. 10). The Brotherhood maintains two local lodges at Houston for the members of the craft —Local 28, composed exclusively of white employees, and Local 6051, composed exclusively of Negro employees. Petitioners and those they represent are barred from membership in Local 28, and are forced to maintain membership in Local 6051. (R. 9, 10). The Brotherhood carries on its collective bargaining with the carrier through Local 28. (R. 9, 10).

On August 21, 1954, petitioners brought a class suit in the United States District Court for the Southern District of Texas, on behalf of themselves and others similarly situated, against the Brotherhood, two of its officials and Local 28, in which they charged that Local 6051, which the

Negro members of the craft are compelled to join, is a segregated, inferior unit of the Brotherhood, maintained solely for the purpose of affording petitioners and those similarly situated representation inferior to and different from that afforded white members of the craft in Local 28 (R. 9, 10); and also that the Brotherhood has refused to afford petitioners and the other Negroes similarly situated representation and protection equal to that afforded those members of the craft who are white (R. 10, 13). The railroad company, their employer, was not made a party to the suit.

Petitioners complained that on or about May 1, 1954, their employer posted a notice at the Freight House allegedly abolishing 45 jobs; that all of these jobs were being held by Negro members of the craft; that no advance notice of the abolition of the jobs was given to petitioners and those similarly situated as required by the collective bargaining agreement (R. 11); that said jobs were not in fact abolished, for immediately thereafter many white persons were hired to perform the same work, and subsequently, some of the same Negro employees who had been previously fired were rehired, but without seniority, and junior to the recently hired white employees (R. 12); and that none of the white members of the craft were discharged or displaced (R. 13). Petitioners further charged in their complaint that the Brotherhood suffered and permitted their jobs to be abolished because of their race and also that the Brotherhood repeatedly refused to grant petitioners a hearing concerning their discharge and declined to come to their aid (R. 11, 12). They alleged that the acts and omissions of the Brotherhood, complained of in this case, constituted a planned course of conduct designed to discriminate against petitioners and those similarly situated, solely because of their race or color, and that by reason of said acts and in refusing to represent them and to give them protection equal to that afforded the white members of the craft, the Brotherhood breached the statutory duty im-

posed upon it by the Railway Labor Act to represent all members of the craft fairly and impartially (R. 13). They further alleged that, by reason of this conduct by the Brotherhood, petitioners and those similarly situated have been deprived of rights and property without due process of law in violation of the Fifth Amendment to the United States Constitution. They prayed for a declaratory judgment, injunctive relief and damages.

The defendants moved to dismiss the complaint on four grounds: (1) lack of jurisdiction of the subject matter; (2) lack of an indispensable party defendant—the railroad company; (3) failure to present a justiciable issue, and (4) failure to state a claim upon which relief can be granted. The District Court dismissed the complaint for lack of jurisdiction of the subject matter. On appeal by petitioners to the United States Court of Appeals for the Fifth Circuit that Court, without discussion, affirmed, in a per curiam opinion, citing *Slocum* vs. *Delaware, L. & W. R. Co.*, 339 U. S. 239, and *Hettenbaugh* v. *Air Line Pilots Association*, 189 F. 2d 319. A petition for rehearing was denied without opinion.

Summary of Argument

The cause of action stated in the complaint is one over which Federal Courts have jurisdiction because it charges the Brotherhood with breach of the statutory duty of fair representation it owed to petitioners as members of a craft of railway employees for which that Brotherhood was the exclusive representative, and with unlawful abuse of statutory position and power. The Brotherhood violated its duty and abused its statutory powers by compelling petitioners, solely on account of their race, to maintain membership in an inferior, ineffective, segregated local of the union, cut off from the local that carried on the collective bargaining, and then refusing to hear the complaints or to take any steps within the collective bargaining process to enforce the rights of petitioners, thus denying to them the benefits and ad-

vantages of collective bargaining. The duty imposed on the bargaining representative by the Railway Labor Act to represent all members of the craft fairly is not limited to the making of a contract but is coextensive with the total authority and power given the representative by the statute. A refusal by the Brotherhood to represent members of the craft, solely on account of race, in any portion of the collective bargaining process is a breach of that duty.

Neither the provisions of the Railway Labor Act nor the doctrine of primary jurisdiction precludes the court from exercising jurisdiction in this action by Negro members of a craft of railway employees, charging their bargaining representative with violation of statutory duty and unlawful abuse of power because (1) such a dispute has not been relegated by the statute to the administrative tribunals created by the Act; (a) the dispute does not involve the interpretation or application of the collective bargaining agreement; (b) the provision of the statute creating the National Railroad Adjustment Board makes no reference to disputes between employees and their representative; (2) No administrative expertise or specialized skill is needed to determine the existence or non-existence of racial discrimination by the bargaining representative in this case, and (3) even if the Adjustment Board had the power to act in this case, it would not constitute an adequate administrative remedy because the very Brotherhood against whom petitioners complain sits as judge on that Board.

ARGUMENT

I. The Complaint Charges The Brotherhood With Breach of the Duty of Fair Representation Imposed Upon It By The Railway Labor Act And With Unlawful Abuse of Statutory Position and Power and, Therefore, Is Within The Jurisdiction of the Court

In 1944 this Court, in the case of *Steele* v. *Louisville & Nashville R. Co., et al.*, 323 U. S. 192, 89 L. Ed. 173, held

that the bargaining representative of a craft of railway employees is under a duty imposed by the Railway Labor Act to represent all members of the craft for which it acts, fairly, impartially and without hostile discrimination, and stated that:

> "So long as a labor union assumes to act as the statutory bargaining representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft." (323 U. S. 192, 204).

This Court held also that a complaint alleging a breach by the collective bargaining representative of that statutory duty states a claim upon which courts have jurisdiction to grant relief and that:

> ". . . the statute contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for breach of that duty." (323 U. S. 192, 207).

In a companion case decided on the same day as *Steele*, this Court held that Federal Courts have jurisdiction of the subject matter of a complaint charging the bargaining representative with breach of the statutory duty of fair representation.

> *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210, 89 L. Ed. 187 (1944).

The principles of the *Steele* and *Tunstall* cases were re-affirmed by this Court in *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232, 94 L. Ed. 23 (1949), and were re-affirmed and extended in *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768, 96 L. Ed. 1293 (1952), where this Court held that the Railway Labor Act prohibits bargaining agents it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers and stated that:

> "Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the rights of other workers." (343 U. S. 768, 774).

These principles have been followed by the United States Circuit Court of Appeals for the Fourth Circuit in *Rolax, et al.* v. *Atlantic Coast Line R. Co., et al.*, 186 F. 2d 473 (1951), and *Dillard* v. *Chesapeake & Ohio R. Co.*, 199 F. 2d 948 (1952), and by the United States Court of Appeals for the Fifth Circuit in *Brotherhood of Locomotive Firemen and Enginemen* v. *Mitchell*, 190 F. 2d 308 (1951), *Central of Georgia Railway Co.* v. *Jones*, 229 F. 2d 648 (1956), and in *Richardson, et al.* v. *Texas & New Orleans R. Co.*, et al., 242 F. 2d 230 (1957).

From the above cited cases it is clear that jurisdiction of courts, both State and Federal, to hear and determine suits brought by members of a craft of railroad employees against their statutory collective bargaining representative, to redress wrongs resulting from unfair representation and to obtain relief from racially discriminatory practices and contracts, is no longer a subject for debate. Nevertheless, in the instant case, the courts below refused to apply these established principles because of the absence of any allegation in the complaint that the collective agreement was unlawful in itself. This action by the courts below pre-supposes the existence of a doctrine of law to the effect that the right of members of a craft of railway employees to fair representation by their collective bargaining representative under the Railway Labor Act is judicially enforceable only when the collective bargaining agreements are unlawfully entered into, or when the agreements themselves are unlawful in terms or effect. Petitioners respectfully urge that the doctrine espoused by the lower courts is unsound in principle; subverts the intention of Congress in enacting the Railway Labor Act and is in the teeth of the pronouncements of this Court.

It is unsound in principle because the exclusion from judicial enforcement of all rights to fair representation except those incident to contract-making leaves the statutory bargaining representative with unbridled power to otherwise discriminate with impunity against members of the craft and free to otherwise use its statutory position and power in a lawless and arbitrary manner, to the detriment of the minority members of the craft for which it is authorized to act.

In enacting the Railway Labor Act to provide for the peaceful maintenance of agreements and settlement of disputes between employer and employee through a continuous process of collective bargaining, Congress saw fit to provide for an exclusive bargaining representative, to be chosen by the majority of the craft, and to vest that representative with the power of complete control of all craft activities and incidents and to legislate for and bind the individual and minority members of the craft even against their will. To protect the individual and minority members from abuse of this statutory power it imposed upon that representative the duty to represent all members of the craft. Clearly, it did not intend to limit this duty or to restrict the right to only one phase of the total authority and power granted. On the contrary, it must be assumed that Congress intended to make that duty coextensive with the total authority and power given the representative by the Act. Otherwise, the Act would bear the condemnation of unconstitutionality under the Fifth Amendment.

Petitioners' contentions in this respect are buttressed further by the legislative history of the Union Shop Amendment to the Act (45 U. S. C., Section 152, Eleventh). This amendment increased the power of the representative over the individual employee by making it lawful for the representative to make an agreement with the carrier requiring that, as a condition of continued employment, all members of the craft must join the union. However, in reporting this legislation to the floor of the Senate the Committee

was careful to make it clear that the grant of authority carried with it the duty to represent. The Committee stated in its report:

> "Your committee also desires to make it clear that nothing in this bill is intended to modify in any way the requirement that the authorized bargaining representative shall represent all the employees in the craft or class, including non-union employees as well as members of the union, fairly, equitably, and in good faith. (See *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, and *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210)." (Senate Report No. 2262, 81st Congress, 2d Session).

The making of a collective bargaining agreement does not complete the collective bargaining process nor exhaust the statutory power of the representative. There is the continuing process of day to day adjustments and periodic discussions concerning such matters as shop rules, job content, and work assignments. These matters, vital to the employment of every member of the craft, have been placed by the Railway Labor Act in the hands of an exclusive bargaining representative. To the extent that the representative participates in this process, it exercises a power which is conferred, defined, regulated and protected by the statute. This Court pointed out in *J. I. Case Co.* v. *National Labor Relations Bd.*, 321 U. S. 332, 88 L. Ed. 762 (1944) that:

> "The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit." (321 U. S. 332, 338);

and in *Steele*, supra:

> "The purpose of providing for a representative is to secure those benefits for those who are represented and not to deprive them or any of them *of the benefits of collective bargaining* for the advantage of the repre-

sentative or those members of the craft who selected it." (323 U. S. 192, 201). (Italics ours.)

Thus, a refusal by the bargaining representative to exercise these non-contract making collective bargaining powers on behalf of Negro members of the craft, solely on account of their race, is a refusal by it to represent all members of the craft, depriving the Negroes of the benefits and advantages of collective bargaining, and constitutes the creation of distinctions within the craft based on race alone.

This Court held in the *Steele* case, supra, that distinctions based on race alone are "obviously irrelevant and invidious" and that "Congress plainly did not undertake to authorize the bargaining representative to make such discriminations." (323 U. S. 192, 203).

The complaint in this case alleges that the Brotherhood used the power conferred upon it by the statute to compel petitioners and the other Negro employees to join and maintain membership in the union. However, it barred them from membership in that local which carries on the collective bargaining for the craft and forced them into an inferior, segregated local, and refused to hear or consider the complaints of the Negroes concerning their welfare as members of the craft. It made an agreement with the carrier covering the craft and then arbitrarily refused to take any steps within the collective bargaining process to enforce the rights of Negro employees covered by that contract. Thus, on the one hand, it abuses its statutory powers and, on the other, it abnegates its statutory duty. Its conduct was a denial to the Negro members of the craft those benefits and advantages of collective bargaining which this Court has held must be open to every member of the represented unit. Here is a clear case of a bargaining representative using Federal statutory power, solely for its own benefit, by compelling the Negro members of the craft to pay hard-earned money into its coffers and then refusing to represent them within the collective bargaining process. Such conduct on the part of the bargaining representative

subverts the purpose of the Railway Labor Act; is unmistakably a refusal on the part of the Brotherhood to represent all members of the craft fairly, and constitutes an unlawful abuse of statutory powers, which under the principles enunciated by this Court in *Steele*, supra, *Tunstall*, supra, *Graham*, supra, and *Howard*, supra, and by the Fourth Circuit in *Dillard* v. *Chesapeake & Ohio Railroad Co.*, supra, courts have jurisdiction to correct and restrain.

It is respectfully submitted that the Courts below erred in refusing to apply the principles of the above-mentioned cases and that, to the extent that *Hettenbaugh* v. *Air Line Pilots Association*, 189 F. 2d 319 (1951), and *Hayes* v. *Union Pacific Railroad Co.*, 184 F. 2d 337, cert. den. 340 U.S. 942, (1951) (cited and relied upon by the courts below in support of their position) may be in conflict with those principles, they are unsound and do not accurately state the law.

II. There Are No Factors Present In This Case Either Ousting or Limiting The Jurisdiction of The Court

As has been shown above, when the complaint in this case is tested by the well settled principles of law applicable to rights and duties arising under the Railway Labor Act, it is immediately apparent that this case falls within the general jurisdiction of Federal Courts. Unless there is present some factor either ousting or limiting that jurisdiction, the justiciability of the cause is beyond question.

The courts below held that the quasi-judicial tribunals established by the Railway Labor Act preclude the courts from exercising jurisdiction. This holding was predicated upon the view that the case was one involving the breach of performance of a collective bargaining agreement. Petitioners contend that this view is erroneous and that the case alleged must be looked upon as one involving a breach of the statutory duty imposed upon the Brotherhood by the Railway Labor Act.

This complaint does not involve a dispute between an employee or group of employees on the one hand, and a carrier or carriers on the other. The railroad company is not even a party to the suit. Although petitioners may have concurrently a claim against their employer for violation of the collective agreement, that claim is not asserted in this case. The dispute petitioners seek to have adjudicated is entirely between them and their statutory representative. The rights here sought to be enforced do not stem from any contract between the carrier and the representative, but directly from the statute, and may be adjudicated without in any manner considering whether there was or was not, in fact, a breach of the collective agreement by the carrier. What must be considered and determined is whether there was a breach by the Brotherhood of the statutory duties imposed upon it to represent all members of the craft fairly and to refrain from using its statutory position and power to discriminate against the Negro members of the craft.

When viewed in this, its true light, it becomes obvious that the dispute here is not one that Congress relegated for adjudication to the administrative tribunals created by the Railway Labor Act but is one that was left to the jurisdiction of the courts. It also becomes obvious that the courts below erroneously applied the doctrine of the *Slocum* case (*Slocum v. Delaware, L. & W.*, 339 U.S. 239, 94 L. Ed. 795 (1950)).

In that case, two unions were vying with each other over certain jobs—each claiming the jobs for its members under its respective collective bargaining agreement. The railroad company was caught in the vise and it brought an action in a New York State court against both unions for a declaratory judgment and prayed for an interpretation of both agreements. This Court held that disputes between carriers and their employees involving the interpretation of collective bargaining agreements fell within the exclusive jurisdiction of the National Railroad Adjustment Board created by the Railway Labor Act.

There is no parallel in the facts alleged in this case to those involved in the *Slocum* case, supra. Here, the suit is brought by individual members of the craft against their collective bargaining representative alone, seeking enforcement of statutory rights especially designed for their protection and welfare. Those rights inhere in the relationship of craft member—craft representative created by the statute and are in no way dependent upon the interpretation of the collective agreement.

Furthermore, no administrative procedure was created by the Railway Labor Act for the determination of disputes between the employee and his statutory bargaining representative. This Court stated in *Steele*, supra, that:

> "Section 3, First (i), which provides for reference to the Adjustment Board of disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements' *makes no reference to disputes between employees and their representative.*" 323 U.S. 192, 205. (Italics ours.)

Since the dispute in this case is between members of the craft and their statutory representative, courts must exercise jurisdiction or leave the members of the craft without remedy. The rights to fair representation and freedom from unlawful abuse of statutory power would be sacrificed and obliterated if courts were without power to redress for violations of those rights.

Petitioners urge also that the doctrine of primary jurisdiction is no bar to the exercise of jurisdiction by the court. This Court has limited this doctrine of prior resort so as to make its applicability dependent upon (1) the nature of the question presented and (2) adequacy of the administrative remedy. Thus it would seem that only those questions which require the skill of administrative specialists and the exercise of specialized judgment should be placed beyond traditional judicial scrutiny and relegated for initial determination to an administrative agency.

Great Northern R. Co. v. *Merchants Elevator Co.*, 259 U.S. 285, 66 L.Ed. 943 (1922).

And where the administrative remedy is inadequate, or the failure of the court to exercise jurisdiction would result in a sacrifice or obliteration of the right involved, prior resort to the administrative agency will not be required.

Georgia v. *Pennsylvania R. Co.*, 324 U.S. 439, 89 L. Ed. 105 (1945).
Steele v. *Louisville & Nashville R. Co.*, supra.

Inasmuch as an interpretation of the collective agreement is neither necessary nor required in this case, no administrative expertise nor specialized skill and judgment is needed for a determination of the issues involved. As has been pointed out, the Railway Labor Act has not placed jurisdiction in the National Railroad Adjustment Board of disputes between employees and their representative. Furthermore, the Brotherhood has its own representative on the Adjustment Board. That representative is paid by the Brotherhood and has no fixed term of employment, but is recallable at the will of the Brotherhood. Thus to require petitioners to submit their case to the Adjustment Board would be to compel them to have their rights adjudicated by the very same persons who are destroying them. Moreover, this Court has already held that where a collective bargaining representative engages in hostile discrimination against Negro members of a craft, those discriminated against are without adequate administrative remedy, and prior resort to the agencies created by the statute is not required.

Steele v. *L. & N. R. Co.*, supra.
Brotherhood of Railroad Trainmen v. *Howard*, supra.

Petitioners conclude, therefore, as this Court did in *Steele*, supra:

> "In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of

the statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which is their duty to give in cases in which they have jurisdiction. . . *For the present command there is no mode of enforcement other than resort to the courts*, whose jurisdiction and duty to afford a remedy for a breach of statutory duty are left unaffected." (323 U.S. 192, 207). (Italics ours).

CONCLUSION

It is respectfully submitted that this complaint, charging abuse of Federal statutory power and disregard of statutory obligation by the Brotherhood and the use by it of its position to discriminate against Negro members of the craft, solely because of their race, is of judicial cognizance, and that the courts below erred in dismissing for lack of jurisdiction of the subject matter.

Respectfully submitted,

JOSEPH C. WADDY
ROBERSON L. KING
Counsel for Petitioners

ROBERT L. CARTER
WILLIAM C. GARDNER
WILLIAM B. BRYANT
Of Counsel